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Case Comment: The Doctrine of Frustration: Unraveling Contracts in Unforeseen Circumstances - Krell v Henry (1903)

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INTRODUCTION

According to Section 2 (e) of the Indian Contract Act, of 1872, "*Every promise and every set of promises forming the consideration for each other is an agreement.*"[1] According to Section 2 (h) of the Indian Contract Act, 1872, "*An agreement enforceable by law is a contract*"[2]. Therefore, all such agreements that satisfy the conditions mentioned in Section 10 of the Indian Contract Act, of 1872, are contracts. Section 10 says," *All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.*"[3] Breach of any of those above-mentioned conditions may result in the contract being void and the contract will not proceed between the parties.[4] Similarly, the Doctrine of Frustration releases the parties from contractual obligations when a sudden event makes it impossible to fulfill the contract. But the event must, be that none of the parties can imagine or control, such as an Act of God. Now, a breach of contract is committed when either

[1] Indian Contract Act 1872, s 2(e)
[2] Indian Contract Act 1872, s 2(h)
[3] Indian Contract Act 1872, s 10
[4] R.K. Bangia, *Contract-1* (8th edn, Allahabad Law Agency 2021)

of the parties fails to fulfill the obligations mentioned in the contract. The consequences of a breach of contract can be financial loss, compensation, or cancellation of the contract. However, an exception to this rule is laid down in Section 56 of the Indian Contract Act, of 1872. Section 56 deals with the Doctrine of Frustration, which says, a promissory is relieved of any liabilities under the doctrine. Section 56 is based on the maxim "*Lex non cogit ad impossible*"[5][6] which means that the law will not compel a man to do what he cannot possibly perform. We can understand the basis of the Doctrine of Frustration in the landmark case of the English Law, *Krell v Henry*[7].

FACTS OF THE CASE

In this case, the defendant, C.S. Henry, and the plaintiff, Paul Krell, entered into a contract by exchanging two letters on 20th June 1902, which stated that Mr. Henry, the defendant, booked a room in Mr. Krell's flat on the third floor, room number 56A, Pall Mall, for two days, that is, the 26th and 27th of June to watch the coronation procession of King Edward VII. The procession would take place and pass along Pall Mall. It was also mentioned that the window of the room would overlook the Pall Mall and should give a great view of the royal procession. The total rent of the room was £75. Mr. Henry, the defendant, put down the sum of £25 as a deposit. But unfortunately, the King fell ill, and the coronation procession was postponed. Mr. Henry refused to pay the remaining amount of £50 to the plaintiff, Mr. Krell, as the room was of no use anymore. The plaintiff, Mr. Krell, sued Mr. Henry, the defendant, for the remaining £50. But in return, the defendant, Mr. Henry, countersued the plaintiff, Mr. Krell, for £25 which was given by the defendant as a deposit.[8]

On 20th June the defendant wrote the following letter to the plaintiff's solicitor: "*I am in receipt of yours of the 18th instant, an inclosing form of agreement for the suite of chamber on the third floor at 56A, Pall Mall, which I have agreed to take for the two days, the 26th and 27th instant, for the sum of £75. For reasons given to you, I cannot agree, but as arranged over the telephone I enclose herewith a cheque for £25 as a deposit, and will thank you for confirming to me that I shall have the entire use of these rooms*

[5] Indian Contract Act 1872, s 56
[6] Rishabh Soni, 'Doctrine of frustration' (*iPleaders,* 12 August 2023) <https://blog.ipleaders.in/doctrine-of-frustration/> accessed 11 June 2024
[7] *Krell v Henry* [1903] 2 KB 740
[8] *Ibid*

during the days (not the nights) of the 26th and 27th instant. You may rely that every care will be taken of the premises and their contents. On the 24th inst. I will pay the balance, viz., £50, to complete the £75 agreed upon."

On the same day, the defendant received the following letter from the plaintiff's solicitor: "*I received your letter of today's date enclosing a cheque for £25 deposit on your agreeing to take Mr. Krell's chambers on the third floor at 56A, Pall Mall for the two days, the 26th and 27th June, and I confirm the agreement that you are to have the entire use of these rooms during the days (but not the nights), the balance, £50, to be paid to me on Tuesday next the 24th instant."*

LEGAL ISSUES

1. Whether the contract was frustrated due to the cancellation of the coronation event.
2. Whether the coronation was an implied condition precedent for the rental contract.
3. Whether the plaintiff or the defendant should bear the consequences of the cancellation of the event.

JUDGEMENT

This action came on for trial before Darling. J, sitting without a jury. He gave his judgment for the defendant on both claim and counterclaim. The plaintiff then appealed to the Court of Appeal. Darling. J held that both the claim and counterclaim were governed by *Taylor v Caldwell*[9], as in this case, the subject matter of the purpose was destroyed which was nobody's fault, and so just like, in this case, Mr. Henry also expected that the coronation procession would be held and he did not fathom the cancellation of the event.

On 11th August 1903, VAUGHAN WILLIAMS, L.J. read the following judgment, ' The real question, in this case, is the extent of the application in English Law of the principle of the Roman Law which has been adopted and acted on many English decisions, and notably in *Taylor v Caldwell*[10]. That is the case at least makes it clear that " *Where, from the nature of the contract, it appears that the parties must from the beginning have known that it could not be fulfilled unless when*

[9] *Taylor v Caldwell* [1863] EWHC J1 (QB)
[10] *Ibid*

the time for the fulfillment arrived, some particular specified thing continued to exist so that when entering into the contract they must have contemplated such continued existence as the foundation of what was to be done; there, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be considered a positive contract, but as subject to an implied condition that the parties shall be excused in case, before the breach, performance becomes impossible from the perishing of the thing without default of the contractor." Thus far it is clear that the principle of the Roman law has been introduced into the English law.'[11]

VAUGHAN WILLIAMS, LJ, then concluded that 'This contract is based on two letters passed between the defendant and the plaintiff on 20th June 1902. The letters do not mention the coronation but just that Mr. Henry, the defendant, will use Mr. Krell's chamber in the daytime on the 26th and 27th of June 1902. But the affidavits on which the agreement was based between the parties showed that the plaintiff exhibited on his premises, third floor at 56A, Pall Mall, made an announcement that the windows of that chamber gave a perfect view of the coronation procession. This announcement compelled the defendant to book the chamber 56A. In his judgment, the chamber was solely booked for one particular purpose and that is to watch the royal procession as the chamber was booked for two days and not nights.'[12]

So, the reason for which the contract was made was frustrated, the defendant was not compelled to pay the remaining £50 of rent, as he never got to stay in the chamber and the defendant's counterclaim of £25 deposit was ignored.

ROMER, LJ, mentioned that "*With some doubt, I have also concluded that this case is governed by the principle on which Taylor v Caldwell*[13] *was decided and accordingly that the appeal must be dismissed. The doubt I have felt was whether the parties to the contract now before as could be said, under the circumstances, not to have had at all in their contemplation the risk that for some reason or other the coronation processions might not take place on the days fixed, or, if the processions took place, might not pass to be capable of being viewed from the rooms mentioned in the contract, and whether, under this contract, that risk was not undertaken by the defendant. But on the question of fact as to what was in the*

[11] *Krell v Henry* [1903] 2 KB 740
[12] *Ibid*
[13] *Taylor v Caldwell* [1863] EWHC J1 (QB)

contemplation of the parties at the time. I do not think it right to differ from the conclusion arrived at by Vaughan Williams, LJ, and as I gather also arrived at my brother Darling. This being so, I concur with the conclusion arrived at by Vaughan Williams, LJ, in his judgment, and I do not desire to add anything to what he has said so fully and completely."[14]

STIRLING, LJ, also concluded by saying, "*I have had an opportunity of reading the judgment arrived at by Vaughan Williams, LJ, with which I entirely agree. Though the case is one of very great difficulty, I think it comes within the principle of Taylor v Caldwell*[15]*, as in this case, the main purpose or the subject matter gets destroyed, and that the appeal should be dismissed.*"[16]

Therefore, the appeal was dismissed.

ANALYSIS

To simplify everything that is mentioned above, according to Section 265 of the Restatement of Contract (American Contract Law), "Where*, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary.*"[17]

The case, *Krell v Henry*, [18] is the landmark case of the Doctrine of Frustration in English Law, which explains the *Frustration of Purpose*. As we learned from the judgment of the case the contract between Mr. Henry and Mr. Krell was made for only one single purpose and that is to watch the royal procession. But as the King fell ill the purpose was frustrated and the event was postponed. According to the Court of Appeal, neither of the parties could have contemplated the cancellation of the event on the particular mentioned date, and so the defendant was not bound to pay the rest of the remaining amount of the rent, that is, £50, to the plaintiff. The appeal made by the plaintiff was dismissed. In my opinion, the judgment made was legally and practically right and was fair to the defendant. The loss suffered by the plaintiff was not to be

[14] *Krell v Henry* [1903] 2 KB 740
[15] *Taylor v Caldwell* [1863] EWHC J1 (QB)
[16] *Krell v Henry* [1903] 2 KB 740
[17] Restatement (Second) of Contract 1981, s 265
[18] *Krell v Henry* [1903] 2 KB 740

recovered from the defendant, as the defendant himself could not have fathomed that the King would fall ill on a future date and the event would be postponed. The cancellation of the event was unforeseen by both of the parties and, no one was at fault.

CONCLUSION

An analysis of the case has brought us the following learnings and understandings – the breach of a contract can be excused if the reason for not being able to fulfill the mentioned obligations in the contract must be something unfathomable and sudden. This is called the Doctrine of Frustration. The mentioned case, *Krell v Henry*, [19] made a lasting impact on contract law and helped us to understand the Doctrine of Frustration better, more precisely the Frustration of Purpose. This upheld the principle of fairness and recognized that the contracts should not be enforced when their core purpose is destroyed by an unforeseen event. This provided us with a balanced approach to situations where unexpected changes affect contractual obligations. Overall, the doctrine attains fairness when the fundamental basis of a contract is disrupted.

[19] *Ibid*